**LEW CHOON CHAN**

**v.**

**PENTADBIR TANAH DAERAH & ANOR.**

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[ORIGINATING SUMMONS NO. 41 OF 1990]
16 DECEMBER 1991

***LAND LAW:*** *Application to remove caveat - Whether there are triable issues - Onus on plaintiff - Balance of convenience - Valid written agreement and full power of attorney granted to plaintiff to perfect his title - Whether limitation applies to divest the plaintiff of caveatable interest and the right to maintain the said caveat - Section 9 Limitation Act 1953 & NLC s. 326 (2).*

This is an application on the part of the trustees as defendants to set aside the order granted by the Court on 23 January 1990 extending the plaintiff's caveat until final disposal of the suit or until further order of the Court.

On 1 November 1966 the deceased had entered into a written agreement with the plaintiff whereby she agreed to sell a piece of land then known as "private lot No. 7045" measuring 23.15 poles (the said property) forming part of lot 5176 held under C.T. 2920 in the Mukim and Daerah of Johor Bahru for the sum of RM3,000 which was paid in two installments the first of RM2,500 on 1 November 1966 and the second of RM500 on 22 April 1967.

The said agreement also contained a power of attorney which was duly registered on 2 November 1966 at the then Supreme Court at Johor Bahru. The said property formed part of the estate of Syed Hassan bin Ahmad Al-Attas and the original trustees were the Estate and Trust Agencies (1927) Ltd. of No. 2 Collyer Quay Singapore.

They were eventually replaced by four beneficiaries by order of the High Court at Johor Bahru on 12 December 1975. The plaintiff then lodged a private caveat dated 14 September 1987 in respect of the said property and on 17 January 1990 he received a notice of intended removal whereupon on 23 January 1990 he applied and obtained from the Court an order for the extension of the caveat.

**Held:**

**[1]** It is clear on the authority that so long as there is in existence a valid written agreement for the sale of land, the plaintiff is entitled to lodge his private caveat to protect his rights under it and to sue for its specific performance.

**[2]** In my view the ground as to the applicability of the Limitation Act upon which Counsel for the trustees has launched his challenge against the order extending the life of the caveat is misconceived as it goes to the merits of the plaintiff's claim and its consideration is therefore premature at this stage.

**[3]** I am of the view that the plaintiff has established a triable issue as to his claim to an interest in the said property and to the fact that, on the balance of convenience, the status quo should be maintained by preventing the trustees from disposing of the said property to some third party.

*[Application of the trustees dismissed with costs.]*

**Cases referred to:**
*Eng Mee Yong v. V. Letchumanan [1977] 2 MLJ 212* ***(cons)***
*Macon Engineers Sdn. Bhd v. Goh Hooi Yin [1976] 2 MLJ 53* ***(foll)***

**Legislation referred to:**
Limitation Act 1953, s. 9
National Land Code 1965, ss. 326

*For the plaintiff - Y.L. Song; M/s. Shariff & Som*
*For the defendant - T.W. Ng; M/s. Jackson & Masacorale*

**JUDGMENT**

**LC Vohrah J:**

The application on the part of the trustees as defendants by way of summons-in-chambers is badly worded but its purpose is clear, namely to set aside the order granted by the Court on 23 January 1990 extending the plaintiff's caveat until final disposal of the suit to be commenced by the plaintiff against the second defendants or until further order of the Court.

The facts of this case can be briefly stated. On 1 November 1966 one Sharifah Noor bte Hassan Al-Attas ("the deceased") entered into a written agreement (See Exh. "LCC2", encl. (2)) with the plaintiff whereby she agreed to sell a piece of land then known as "private Lot No. 7045" measuring 23.15 poles ("the said property") forming "part of Lot 5176 held under C.T. 2920" in the Mukim and Daerah of Johor Bahru for the sum of RM3,000 which was paid in two installments, the first of RM2,500 on 1 November 1966 and the second of RM500 on 22 April 1967 (See Exh. "LCC1", encl. (2)). The said agreement also contained a power of attorney which was duly registered on 2 November 1966 at the then Supreme Court at Johor Bahru. The said property formed part of the estate of Syed Hassan bin Ahmad Al-Attas and the original trustees were the Estate and Trust Agencies (1927) Ltd. of No. 2 Collyer Quay, Singapore. They were eventually replaced by four beneficiaries by order of the High Court at Johor Bahru on 12 December 1975. The plaintiff then lodged a private caveat dated 14 September 1987 in respect of the said property and on 17 January 1990 he received a notice of intended removal in Form 19C whereupon on 23 January 1990 he applied and obtained from the Court an order for the extension of the caveat.

Counsel for the plaintiff concedes that on the basis of the principles enunciated in *Eng Mee Yong v. V. Letchumanan* [1977] 2 MLJ 212 the onus is upon the plaintiff to show that, firstly, there is a triable issue and, secondly, on the balance of convenience it is better to maintain the caveat. In his affidavit evidence the plaintiff has shown, *inter alia*, the existence of the written agreement and a full power of attorney granted to the plaintiff to take all necessary action to perfect his title to the said property (See Exh. "LCC2", encl. (2)), the full payment of the purchase price of the said property (See Exh. "LCC1", encl. (2)), the written representation that the deceased was beneficial owner of the said property (See Exh. "LCC7", encl. (18)) and the receipt for the quit rent paid by the plaintiff for the said property (See Exh. "LCC5", encl. (15)). It is clear on the authority of *Macon Engineers Sdn. Bhd. v. Goh Hooi Yin* [1976] 2 MLJ 53 that so long as there is in existence a valid written agreement for the sale of land, the plaintiff is entitled to lodge his private caveat to protect his rights under it and to sue for its specific performance. It is on record that the plaintiff has on 23 March 1991 filed a civil suit in C.S. No. 22-70 of 1991 for specific performance of the written agreement.

From his averments the complaint of the plaintiff is that he has been trying to register the said property in his name without success because the said property "had been held by various trustees ... which trustees had been changing from time to time since the early 1970s." The plaintiff has furnished proof of his attempts to obtain the transfer of the said property by means of two letters, one dated 3 April 1969 (Exh. "LCC3", encl. (2)) and the other dated 22 December 1970 (Exh. "LCC4", encl. (2)) addressed to the solicitors of the then trustees. The first letter reads:

Lew Choon Chan,
30, Jalan Ngee Heng,
Johor Bahru.
3rd April 1969

To:
Laycock and Ong,
Advocate and Solicitors.
Ref: JCC/15225/LT

Dear Sir,
Estate of Syed Hassan bin Ahmad Al-Attas - deceased
Re: Caveat against Lot 5176 (Sub-divided Lot 7045)

I am in receipt of your letter dated 10 March 1969 for which I thank you.

I have to inform you that I have lodged a caveat against the above land on 30 March 1969 and notice of the said caveat will be served on you in due course by the Commissioner of Lands and Mines, Johor Bahru.

I do hereby give you instruction to prepare the Transfer of Land in respect of the above land to have the same transferred and registered into my name as the Purchaser thereof in pursuant (sic) to an agreement of Sale and Power of Attorney dated on 1 November 1966 made between Sharifah Noor binti Hassan Al-Attas, the owner thereof [on] the one part and myself. Please let me know when I shall call at your office to execute the said Transfer of Land.

I undertake to pay you the usual cost thereon.

Yours faithfully,

sgd

The second letter reads:

Abdullah A. Rahman & Co.,
Advocates & Solicitors.
Foh Chong Building,
5-C, 5th Floor,
66, Jalan Ibrahim,
Johor Bahru.
22nd December 1970.

M/s. Laycock & Ong,
Advocates & Solicitors,
Nunes Building,
Malacca Street,
P.O. Box 2670,
Singapore 1.

Dear Sirs,

Lot 7045 formerly part of Lot 5176 in C.T. 2920

We act for the estate of Sharifah Noor Bte Hassan Al-Attas late of 49, Jalan Ngee Heng, Johor Bahru.

We have been consulted by Mr. Lew Choon Chan presently of 30, Jalan Ngee Heng, Johor Bahru regarding a purchase of the above lot by him from our late client, by virtue of an Agreement of Sale and Power of Attorney dated 1 November 1966 (Power of Attorney registered No. 652/66 at the High Court, Johor Bahru). We are given to understand that the above lot has been issued its own separate title in the name of Estate and Trust Agencies as trustees.

We shall be obliged if you will kindly let us know the present position regarding this particular lot.

Thanking you.

Yours faithfully,

sgd.

c.c.
Mr. Lew Choon Chan,
30, Jalan Ngee Heng,
Johor Bahru.

In the arguments before me for the removal of the caveat Counsel for the trustees has not challenged any of the facts averred to by the plaintiff. He has in fact proceeded on one ground and one ground only, namely limitation which is normally pleaded as a defence to a claim. He argues that s. 9 of the Limitation Act 1953, stipulating that no action shall be brought to recover any land after the expiration of twelve years from the date of the accrual of the right of action, applies to divest the plaintiff of his caveatable interest and right to maintain the caveat in respect of the said property. He refers to the letter dated 3 April 1969 (*supra*) and argues that when solicitors for the trustees failed to effect the transfer of the said property time for the purposes of limitation began to run from the date of that letter as that date, he contends, was the date of the infringement of the plaintiff's right and accordingly the twelve-year period ended on 3 April 1981, well before 23 January 1990 when the Court made the order for the extension of the plaintiff's caveat. Counsel explains that as limitation had barred the plaintiff's claim by 3 April 1981 all his legal and beneficial interests in the said property would have been extinguished so that he had no ground to maintain any caveat in the said property. Counsel for the plaintiff however contends that as no replies were ever received by the plaintiff to the two letters and as the only response was the notice in Form 19C which was served on the plaintiff only on 18 January 1990, that date would be the date on which there was a clear and unequivocal threat to infringe the plaintiff's right to the land. These contentions indicate that the operative date with regard to the accrual of the plaintiff's right of action is in issue and the matter has, in my view, to be litigated in order to determine the full extent and results of the inquiries that were pursued by the plaintiff to ascertain who the trustees were so that he could perfect his title.

In my view the ground as to the applicability of the Limitation Act upon which Counsel for the trustees has launched his challenge against the order extending the life of the caveat is misconceived as it goes to the merits of the plaintiff's claim and its consideration is therefore premature at this stage.

On these facts I am of the view that the plaintiff has established a triable issue as to his claim to an interest in the said property and to the fact that, on the balance of convenience, the *status quo* should be maintained by preventing the trustees from disposing of the said property to some third party.

In the event, the application of the trustees is dismissed with costs.

Also found at [1992] 1 CLJ 687